

MANDATE

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 4th day of January, two thousand seventeen.

Present:

Dennis Jacobs,
Peter W. Hall,
Denny Chin,
Circuit Judges.

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No: 16-3856
v.	:	
	:	Board Case Nos.:
BROOKDALE SENIOR LIVING	:	03-CA-173607, 03-CA-173613,
COMMUNITIES, INC. D/B/A STERLING	:	03-CA-175187, 03-CA-175675,
HOUSE OF NIAGARA	:	03-CA-176994
	:	
Respondent	:	

JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

THIS CAUSE was submitted upon the application of the National Labor Relations Board for entry of a consent judgment against Respondent, Brookdale Senior Living Communities, Inc. d/b/a Sterling House of Niagara, its officers, agents, successors, and assigns, enforcing its order dated October 17, 2016, in Case Nos. 03-CA-173607, 03-CA-173613, 03-CA-175187, 03-CA-175675 and 03-CA-176994, and upon the record in that proceeding, certified and filed in this Court enforcing the order.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by the United States Court of Appeals for the Second Circuit that the order of the National Labor Relations Board be, and the same is hereby enforced; and that the Respondent, Brookdale Senior Living Communities, Inc. d/b/a Sterling House of Niagara, their officers, agents, successors, assigns and representatives shall abide by and perform the directions of the Board set forth in its order. (See Attached Order and Appendix).

MANDATE ISSUED ON 01/04/2017

Mandate shall issue forthwith.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk




A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit




NATIONAL LABOR RELATIONS BOARD

v.

BROOKDALE SENIOR LIVING COMMUNITIES, INC.
D/B/A STERLING HOUSE OF NIAGARA

ORDER

Brookdale Senior Living Communities, Inc. d/b/a Sterling House of Niagara, North Tonawanda, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from

- (a) Promising employees a wage increase if they remove the Union as their bargaining representative;
- (b) Promising employees a wage increase because they are no longer in the Unit for the purpose of undermining the Union;
- (c) Making statements intended to undermine the Union and its contract ratification process.
- (d) Failing and refusing to recognize the Union as the collective-bargaining representative of the employees in the appropriate bargaining unit set forth below:

All full-time and regular part-time employees employed at the Sterling House location, excluding Health and Wellness Director, Resident Program Coordinator, Executive Director, Business Office Manager/Receptionist, Sales Manager, Dining Services Coordinator, Hair Stylist, guards and confidential employees, and professional employees and supervisors as defined in the Act.

- (e) Failing to execute and abide by the collective-bargaining agreement negotiated with the Union;
- (f) Maintaining a mandatory arbitration agreement at the Respondent's facility, located at 6741 Nash Rd., North Tonawanda, New York 14120, that prohibits employees from engaging in protected concerted activities, including class or collective action addressing terms and conditions of employment;

- (g) Implementing and maintaining a dispute resolution procedure without bargaining with the Union;
 - (h) Refusing to grant to Unit employees a wage increase which had been granted to non-Unit employees in retaliation for pro-union activities;
 - (i) Granting retroactive wage increases to employees that leave the Unit in order to discourage pro-union activities;
 - (j) Granting wage increases without bargaining with the Union except as permitted by the collective-bargaining agreement;
 - (k) Imposing discretionary discipline on Unit employees without bargaining with the Union unless a collective-bargaining agreement containing a grievance procedure is in effect;
 - (l) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act:
- (a) Recognize and, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the Unit employees;
 - (b) Execute and abide by the terms of the collective-bargaining agreement effective by its terms from May 1, 2016 through May 1, 2019, and give retroactive effect to the terms of the agreement as of May 1, 2016;
 - (c) Make whole its employees for loss of pay and benefits suffered by reason of the Respondent's refusal to execute and give effect to the collective-bargaining agreement agreed to by the parties effective by its terms from May 1, 2016 through May 1, 2019, restoring whatever rights and privileges employees may have lost by reason of the Respondent's failure to execute and give effect to the agreement, including pay all non-probationary employees wage increases consistent with Article 39 of the collective-bargaining agreement, retroactive to May 1, 2016, with interest, in accordance with the Board's decisions in *New Horizons*, 283 NLRB 1173 (1987), and *Kentucky River Medical Center*, 356 NLRB 6 (2010);
 - (d) Upon request of the Union, rescind the Brookdale Dispute Resolution Agreement as it pertains to members of the Unit;

- (e) Rescind the portion(s) of the Brookdale Dispute Resolution Agreement in effect at the Respondent's facility, located at 6741 Nash Rd., North Tonawanda, New York 14120, that prohibits employees from engaging in protected concerted activities, including class or collective action addressing terms and conditions of employment;
- (f) Upon request of the Union, grant Unit employees, retroactive to March 1, 2015, the same wage increases granted to former Unit employees Kuntz and Matters upon their transfer out of the Unit;
- (g) Upon request of the Union, rescind and bargain collectively and in good faith with the Union over the December 2015 suspension of its employee Matters;
- (h) Before implementing any future changes in wages, hours, or other terms and conditions of employment affecting members of the Unit, notify and, on request, bargain collectively and in good faith with the Union as the exclusive representative of employees in the Unit except as permitted by the collective-bargaining agreement;
- (i) Within 14 days of service by the Region, post at its North Tonawanda, New York facility copies of the attached notice marked "Appendix A." Copies of the notice, on forms provided by Region 3, after being signed by the Respondent's authorized representative(s), shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the Respondent shall hold a mandatory meeting or meetings scheduled to ensure the widest possible attendance, at which the Respondent's representative will read the notice to the employees on work time in the presence of a Board agent. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former bargaining unit employees employed by the Respondent since April 4, 2016.
- (j) Within 21 days after service by the Region, file with the Regional Director for Region 3 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply with this agreement.

APPENDIX A

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

**PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER
AND A CONSENT JUDGMENT OF ANY APPROPRIATE
UNITED STATES COURT OF APPEALS**

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;
Choose a representative to bargain with us on your behalf;
Act together with other employees for your benefit and protection;
Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT fail and refuse to recognize the United Food and Commercial Workers,
District Union Local One (Union) as the collective-bargaining representative of all employees in the appropriate bargaining unit (Unit) set forth below:

All full-time and regular part-time employees employed at the Sterling House location, excluding Health and Wellness Director, Resident Program Coordinator, Executive Director, Business Office Manager/Receptionist, Sales Manager, Dining Services Coordinator, Hair Stylist, guards and confidential employees, and professional employees and supervisors as defined in the Act.

WE WILL NOT refuse to execute and abide by the collective-bargaining agreement we negotiated with the Union.

WE WILL NOT promise employees a wage increase if they remove the Union as their bargaining representative.

WE WILL NOT promise employees a wage increase because they are no longer in the Unit for the purpose of undermining the Union.

WE WILL NOT tell employees that the Union lied to them about the parties reaching a contract agreement and refer to the contract agreement as “fraudulent”.

WE WILL NOT maintain a mandatory arbitration agreement at this facility that prohibits employees from engaging in protected concerted activities, including class or collective action addressing terms and conditions of employment.

WE WILL NOT implement and maintain a dispute resolution procedure without bargaining with the Union.

WE WILL NOT refuse to grant wage increases to Unit employees, which had been granted to non-Unit employees, in order to discourage pro-union activities.

WE WILL NOT grant wage increases without bargaining with the Union except as permitted by the collective-bargaining agreement.

WE WILL NOT impose discretionary discipline on Unit employees without bargaining with the Union unless a collective bargaining agreement containing a grievance procedure is in effect.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act.

WE WILL recognize and, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the Unit employees.

WE WILL execute and abide by the terms of the collective-bargaining agreement effective by its terms from May 1, 2016 through May 1, 2019, and give retroactive effect to the terms of the agreement as of May 1, 2016.

WE WILL make our employees whole for loss of pay and benefits suffered by reason of our refusal to execute and give effect to the collective-bargaining agreement agreed to by the parties effective by its terms from May 1, 2016 through May 1, 2019, restoring whatever rights and privileges employees may have lost by reason of our failure to execute and give effect to the agreement, including pay all non-probationary employees wage increases consistent with Article 39 of the collective-bargaining agreement, retroactive to May 1, 2016, with interest.

WE WILL, upon request of the Union, rescind the Brookdale Dispute Resolution Agreement as it pertains to members of the Unit.

WE WILL rescind the portion(s) of the Brookdale Dispute Resolution Agreement at this facility that prohibit employees from engaging in protected concerted activities, including class or collective action addressing terms and conditions of employment.

WE WILL grant Unit employees the same wage increases granted to former Unit employees Kuntz and Matters upon their transfer out of the Unit, retroactive to March 1, 2015.

WE WILL, upon request of the Union, rescind and bargain collectively and in good faith with the Union over the December 2015 suspension of our employee Matters.

Before implementing any future changes in wages, hours, or other terms and conditions of employment affecting members of the Unit, **WE WILL** notify and, on request, bargain collectively and in good faith with the Union as the exclusive representative of the employees in the Unit except as such changes are permitted by the collective-bargaining agreement.

**BROOKDALE SENIOR LIVING COMMUNITIES, INC.
D/B/A STERLING HOUSE OF NIAGARA**

The Board's decision can be found at www.nlrb.gov/case/03-CA-173607 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

